

By Senator Perry

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1 A bill to be entitled
2 An act relating to administrative proceedings;
3 amending s. 57.111, F.S.; revising legislative
4 findings and purpose; defining terms; requiring an
5 award of attorney fees and costs to be made to a
6 prevailing party in specified administrative
7 proceedings subject to certain requirements; requiring
8 an administrative law judge to conduct an evidentiary
9 hearing and issue a final order on application for
10 such award; providing a limit on an award of attorney
11 fees and costs; amending ss. 379.502 and 403.121,
12 F.S.; conforming cross-references; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Subsection (2) of section 57.111, Florida
18 Statutes, is amended, present paragraphs (b) through (f) of
19 subsection (3) of that section are redesignated as paragraphs
20 (c), (g), (h), (j), and (i), respectively, and new paragraphs
21 (b), (d), (e), and (f) are added to that subsection, present
22 subsection (6) of that section is redesignated as subsection
23 (7), and a new subsection (6) is added to that section, to read:

24 57.111 Civil actions and administrative proceedings
25 initiated by state agencies; attorneys' fees and costs.—

26 (2) (a) The Legislature finds that certain persons may be
27 deterred from seeking review of, or defending against,
28 unreasonable governmental action because of the expense of civil
29 actions and administrative proceedings. Because of the greater

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30 resources of the state, the standard for an award of attorney
31 ~~attorney's~~ fees and costs against the state should be different
32 from the standard for an award against a private litigant.

33 (b) The Legislature further finds that certain persons may
34 be unjustly affected by delay and expense caused by challenges
35 to permits or other orders issued by governmental agencies as
36 initiated through administrative proceedings. Because the
37 financial consequences of delay on projects authorized by
38 permits and orders are much greater than the consequences faced
39 by plaintiffs in such proceedings, the standard for an award of
40 attorney fees and costs should be different from the standard
41 for an award in other proceedings.

42 (c) The purpose of this section is to diminish the
43 deterrent effect of seeking review of, or defending against,
44 governmental action by providing in certain situations an award
45 of attorney ~~attorney's~~ fees and costs against the state and to
46 diminish the imbalance of consequences when seeking review of,
47 or defending against, such challenges in administrative
48 proceedings by providing in certain situations an award of
49 attorney fees and costs against the party that does not prevail.

50 (3) As used in this section:

51 (b) The term "initiated by a party seeking to challenge a
52 permit" means an administrative proceeding filed pursuant to
53 chapter 120 requesting the cancellation or modification of a
54 permit as defined herein.

55 (d) The term "party" means a party to an administrative
56 proceeding pursuant to chapter 120 which has been initiated by a
57 party to cancel or modify a permit as defined herein.

58 (e) The term "permit" means any permit or other official

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59 action of state government having the effect of authorizing the
60 development of land.

61 (f) A party is a "prevailing party" when:

62 1. A final judgment or order has been entered in favor of
63 the party and such judgment or order has not been reversed on
64 appeal or the time for seeking judicial review of the judgment
65 or order has expired;

66 2. A settlement has been obtained by the party which is
67 favorable to the party on the majority of issues that such party
68 raised during the course of the proceeding; or

69 3. The opposing party who initiated the administrative
70 proceeding has sought a voluntary dismissal of its complaint or
71 petition more than 30 days after that party initiated the
72 proceeding.

73 (6) (a) Unless otherwise provided by law, an award of
74 attorney fees and costs shall be made to a prevailing party in
75 any administrative proceeding initiated by a party seeking to
76 cancel or modify a permit as defined herein unless the challenge
77 was substantially justified or special circumstances exist which
78 would make the award unjust.

79 (b)1. To apply for an award under this section, the
80 attorney for the prevailing party must submit an itemized
81 affidavit to the court that first conducted the adversarial
82 proceeding in the underlying action, or by electronic means
83 through the website of the Division of Administrative Hearings,
84 which shall assign an administrative law judge in the case of a
85 proceeding pursuant to chapter 120. The itemized affidavit
86 submitted must reveal the nature and extent of the services the
87 attorney rendered as well as the costs incurred in preparations,

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88 motions, hearings, and appeals in the proceeding.

89 2. The application for an award of attorney fees must be
90 made within 60 days after the date that the party becomes a
91 prevailing party.

92 (c) The administrative law judge shall promptly conduct an
93 evidentiary hearing on the application for an award of attorney
94 fees and shall issue a final order. The final order of an
95 administrative law judge is reviewable in accordance with s.
96 120.68. If a court affirms the award of attorney fees and costs
97 in whole or in part, it may, in its discretion, award additional
98 attorney fees and costs for the appeal.

99 (d) An award of attorney fees and costs under this
100 subsection may not exceed \$50,000.

101 Section 2. Paragraph (f) of subsection (2) of section
102 379.502, Florida Statutes, is amended to read:

103 379.502 Enforcement; procedure; remedies.—The commission
104 has the following judicial and administrative remedies available
105 to it for violations of s. 379.501:

106 (2)

107 (f) In any administrative proceeding brought by the
108 commission, the prevailing party shall recover all costs as
109 provided in ss. 57.041 and 57.071. The costs must be included in
110 the final order. The respondent is the prevailing party when an
111 order is entered awarding no penalties to the commission and the
112 order has not been reversed on appeal or the time for seeking
113 judicial review has expired. The respondent is entitled to an
114 award of attorney ~~attorney's~~ fees if the administrative law
115 judge determines that the notice of violation issued by the
116 commission was not substantially justified as defined in s.

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117 57.111(3) ~~s. 57.111(3)(e)~~. An award of attorney ~~attorney's~~ fees
118 as provided by this subsection may not exceed \$15,000.

119 Section 3. Paragraph (f) of subsection (2) of section
120 403.121, Florida Statutes, is amended to read:

121 403.121 Enforcement; procedure; remedies.—The department
122 shall have the following judicial and administrative remedies
123 available to it for violations of this chapter, as specified in
124 s. 403.161(1).

125 (2) Administrative remedies:

126 (f) In any administrative proceeding brought by the
127 department, the prevailing party shall recover all costs as
128 provided in ss. 57.041 and 57.071. The costs must be included in
129 the final order. The respondent is the prevailing party when an
130 order is entered awarding no penalties to the department and
131 such order has not been reversed on appeal or the time for
132 seeking judicial review has expired. The respondent shall be
133 entitled to an award of attorney ~~attorney's~~ fees if the
134 administrative law judge determines that the notice of violation
135 issued by the department seeking the imposition of
136 administrative penalties was not substantially justified as
137 defined in s. 57.111(3) ~~s. 57.111(3)(e)~~. No award of attorney
138 ~~attorney's~~ fees as provided by this subsection shall exceed
139 \$15,000.

140 Section 4. This act shall take effect July 1, 2017.